IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1153 OF 2004

Shri Ramchandra Krishnaji Shelke
(since deceased, through legal heirs)
Ankush Ramchandra Shelke 7 ors. ... Appellants

V/s

Shri Laxman Krishnaji Shelke & ors. ... Respondents

Mr. Sachin Chavan holding for Mr. Shriram S. Kulkarni for the appellants.

None for the respondents.

ALONGWITH

SECOND APPEAL NO. 793 OF 2005

Shri Laxman Krishnaji Shelke & ors. ... Appellants

V/s

Ramchandra Krishnaji Shelke
(since deceased, through his L.Rs.)
1(a) Sonabai Ramchandra Shelke & ors. ... Respondents

Mr. M.A. Udgikar for the appellants.

None for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 25TH AUGUST, 2005

P.C.:

1. Both appeals are being heard and disposed of by this

common order as they arise out of common judgment passed by the Trial Court in R.C.S. No.18 of 1989 and was disposed of by the appellate Court by order dated 5.4.2004 with certain modifications in the lower Court's order.

2. The plaintiff as well as defendant No.1 had referred R.C.A. No. 58 of 1993 and R.C.A. No. 58 of 1993 against the judgment passed by the Trial Court decreeing the suit for the partition of the lower appellate Court and disposed of both appeals by common judgment, whereas Regular Civil Appeal No. 53 of 1993 by original defendant No.1 claiming for certain properties in the suit for self-acquired property was dismissed. Whereas, plaintiff's Regular Civil Appeal No. 58 of 1993 was partly allowed with modification with regard to the quantum of share of the respective parties.

3. Heard learned counsel for the appellants in both appeals. Perused the record.

4. The plaintiff filed the suit for partition and separate possession to the extent of 1/3 share from the suit properties bearing Gat Nos. 77, 435, 1450, 236/1 and 1615 of Village Paragaon, Tal. Daund on the ground

that those were ancestral properties and he had 1/3 share therein.

Defendants contested the suit inter-alia submitting that part of the suit properties was their self-acquired property. It was also contended that there was previous partition in the year 1964 with regard to certain properties involved in the suit and, therefore, their properties cannot be the subject matter to the partition as prayed for and sought dismissal of the suit.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that he had 1/3 share in the suit properties Gat No.77, 435, 1450 and 1615 of Village Paragaon, Tal. Daund, Dist. Pune and hence he also held that defendants 1 and 6 are also entitled for their 1/3 share from the suit properties and decreed the suit.

The appeal was carried to the District Court at Baramati. The learned Addil. District Judge, after hearing both parties came to the conclusion that the appeal preferred by the defendant No.1 was liable to be dismissed as he did not prove part of the suit properties as he did not prove that part of the suit

property was self-acquired property and modified the decree in the appeal preferred by the plaintiff to the extent that instead of 1/3 share, it was held that party had 1/5 share therein and disposed of the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this case. The learned counsel for the appellant-defendant No.1 submitted that he was serving Post & Telegraph Department and had purchased suit property Gat No.77, 435 and 1450 for his own income for consideration of his being Karta and, therefore, those properties were self-acquired properties. However, both the Courts below have found absolutely no evidence in support of this contention raised on behalf of the appellant-defendant No.1 and his plea to that extent was dismissed.

On the other hand, the plaintiff came with the case that defendant had relinquished his share in the suit property and, therefore, the plaintiff would get 1/3 share in the suit properties. However, the lower appellate Court found that there is absolutely no evidence of relinquishment of his suit properties to

defendant No.7 and, as such, the plea of the plaintiff that he had 1/3 share in the suit properties was rejected and it was held that parties have 1/5 share in the suit property and, and as such the decree was modified and appeal was allowed.

In view of this factual matrix, there is absolutely no reason to disturb the finding recorded by the lower appellate Court in both appeals as they are based on factual aspects of the evidence and, as such, I hold that both appeals are devoid of any merits and hence both appeals stand dismissed with no order as to costs.

Consequently, Civil Application No. 1607 of 2004 in Second Appeal No. 1153 of 2004 also stands dismissed with no order as to costs.

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